

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ST. LUKE COMMUNITY)	CV 09-92-M-DWM
HEALTH CARE,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
KATHLEEN SEBELUIS, as Secretary)	
of the United States Department of)	
Health and Human Services,)	
MICHELLE SNYDER, as Acting)	
Administrator of the Centers for)	
Medicare and Medicaid, NORIDIAN)	
ADMINISTRATIVE SERVICES, and)	
BLUE CROSS BLUE SHIELD)	
ASSOCIATION,)	
)	
Defendants.)	
)	

Plaintiff St. Luke Community Health Care (“St. Luke”) brought this action seeking review of a final decision by the Secretary of the United States Department of Health and Human Services (“Secretary”). The decision denied St.

Luke's claim for reimbursement of certain health care costs under the Medicare health insurance program. 42 U.S.C. § 1395 et seq. On January 19, 2010, St. Luke filed its Motion for Summary Judgment (dkt #18) followed by Defendants' cross-motion for summary judgment (dkt #21) on January 29, 2010.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on April 14, 2010. Neither party objected and therefore they are not entitled to de novo review of the record. 28 U.S.C. § 636(b)(1); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch found that none of the arguments offered by St. Luke's, in support of its contention that the Secretary's decision was arbitrary and capricious, were persuasive. He found that St. Luke's Nurse Anesthetist on-call costs do not fall within the general category of reasonable costs reimbursable under the Medicare program. As to St. Luke's assertion the costs are reimbursable because they are not expressly excluded from the category of reimbursable costs, he found

the Secretary's interpretation is entitled to substantial deference, and does not warrant reversal under the Administrative Procedures Act, 5 U.S.C. § 701 et seq. Judge Lynch also found the record in this case does not establish that the Secretary knowingly provided reimbursement for Nurse Anesthetist on-call costs prior to disallowing the costs in this case.

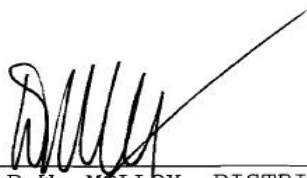
After review pursuant to the applicable provisions of the Administrative Procedures Act, 5 U.S.C. § 701 et seq., Judge Lynch could not conclude that the Secretary's April 23, 2009 decision in this matter was arbitrary, capricious, an abuse of discretion, not in accordance with law, or unsupported by substantial evidence. Based on that conclusion, Judge Lynch recommended that St. Luke's Motion for Summary Judgment be denied and Defendants' Cross-Motion for Summary Judgment be granted. Upon review, I find no clear error in Judge Lynch's Findings and Recommendation.

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #26) are adopted in full.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment (dkt #18) is DENIED and Defendants' cross-motion for summary judgment (dkt #21) is GRANTED. This action is DISMISSED.

The Clerk of Court is directed to close the case.

DATED this 5th day of May, 2010.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT

